Mr. HATCH. We just do not feel that people on the east coast—I am kidding. Yes.

Mr. SARBANES. Let us make it a trio.

Mr. HATCH. Let us make it 100 of us. We are all serious. The fact of the matter is let us see what we can do to get Senator DOLE to resolve this.

Will the Senator yield for a unanimous-consent request?

Mr. BYRD. Yes.

## PROVIDING FOR AN ADJOURNMENT OF THE TWO HOUSES—HOUSE CONCURRENT RESOLUTION 30

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate temporarily lay aside the pending business and turn to the consideration of House Concurrent Resolution Res 30, the adjournment resolution.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. HATCH. Mr. President, I ask unanimous consent that concurrent resolution be agreed to and that the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the concurrent resolution (H. Con. Res. 30) was agreed to; as follows:

H. CON. RES. 30

*Resolved by the House of Representatives (the Senate concurring),* That when the House adjourns on the legislative day of Thursday, February 16, 1995, it stand adjourned until 12:30 p.m. on Tuesday, February 21, 1995, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate recesses or adjourns at the close of business on Thursday, February 16, 1995, pursuant to a motion made by the Majority Leader or his designee, in accordance with this resolution, it stand recessed or adjourned until noon, or at such time on that day as may be specified by the Majority Leader or his designee in the motion to recess or adjourn, on Wednesday, February 22, 1995, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and Senate, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

## BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

The Senate continued with the consideration of the joint resolution.

Mr. HATCH. I ask that the Senate resume the pending bill.

Mr. BYRD. While the distinguished Senator is making an inquiry of the majority leader, let me just say for the RECORD that the distinguished Senator from Utah talks about this amendment that is presently before the Senate as having had 14 days of debate.

Mr. HATCH. Will the Senator yield, and I will make a unanimous consent request on the Senator's request, if it is all right?

Mr. BYRD. On the request that we have been discussing, yes.

## UNANIMOUS CONSENT AGREEMENT

Mr. HATCH. Mr. President, I ask unanimous consent that the time prior to a motion to table amendment No. 252, the Byrd amendment, be limited to 2 hours to be equally divided, and that no amendments be in order prior to the motion to table. As I understood it, the Senator wanted it after the cloture vote?

Mr. BYRD. Yes. Would the Senator provide for the alternative of amendment No. 256, either/or?

Mr. HATCH. Could the Senator give me a copy of amendment No. 256?

Mr. BYRD. I ask that the clerk state, for the edification of the Senate, amendment No. 256.

The PRESIDING OFFICER (Mr. SMITH). The clerk will report the amendment for the information of the Senate.

The assistant legislative clerk read as follows:

Amendment 256: On page 2, lines 24 and 25, strike ''adopted by a majority of the whole number of each House.''

Mr. HATCH. Would the Senator agree to bring up the amendment and have the 2 hours, if there are two cloture votes, after the second cloture vote, if necessary?

Mr. BYRD. Yes. I have no desire to interfere with cloture votes.

Mr. HATCH. Then let us add either No. 252 or No. 256 to the request. The Senator will have his choice on amendments.

Mr. BYRD. Yes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. I thank the distinguished Senator.

May I say briefly that I want to yield to Senator PELL for 10 minutes and then I am going to yield the floor.

The distinguished Senator from Utah—and he is a distinguished Senator—has talked about the 14 days that we have spent on this constitutional amendment. Well, so what? The constitutional Framers spent 116 days—116 days in closed session at the Constitutional Convention—116 days. And now we have spent, the Senator said, 14 days. So what? What is 14 days as between us Senators, 14 days to amend the Constitution in a way which can destroy the separation of powers and checks and balances—14 days.

The other body spent all of 2 days on this constitutional amendment. I believe that is right, 2 days. What a joke! Two days in adopting this constitutional amendment. Why, any town council in this country would spend 2 days in determining whether or not it should issue a permit to build a golf course.

Two days to amend the Constitution.

I will not say any more than that now.

I ask unanimous consent that I may yield to the distinguished Senator from Rhode Island. He has an ambassador waiting on him in his office. I understand he wishes 10 minutes.

Mr. PELL. Thank you very much.

Mr. HATCH. Reserving the right to object, would the distinguished Senator allow me just a few seconds to just make a closing comment on what the distinguished Senator just said?

Yes, they did spend over 100 days to arrive at the full Constitution, without the Bill of Rights. And we have spent 19 years working on this amendment. This amendment is virtually the same as we brought up in 1982, 1986, and last year. We have had weeks of debate on this amendment. It is a bipartisan amendment. It has been developed in consultation between Democrats and Republicans in the House and in the Senate. It has had a lot of deliberation, consideration, negotiation, and debate on the floor.

Admittedly, I am sure the distinguished Senator from West Virginia would agree that the constitutional convention did not debate this on the floor of the Senate at the time, nor would it have taken that much time had there been a debate on the floor of the Senate. But be that as it may, if it had, we are living today with an amendment that is one amendment to the whole Constitution that, if adopted, would become the 28th amendment to the Constitution.

We have spent 14 days on the floor. I am willing to spend more. I am not complaining, and I do want to have a full and fair debate, but I also believe that we are reaching a point where there is deliberate delay here, not by the distinguished Senator from West Virginia necessarily, but I believe reasonable people can conclude that there is a desire to delay this amendment for whatever purpose that may be and that is the right of Senators if they want to do it.

The majority leader has filed a cloture motion which we voted on today. We had 57 Senators who wanted to end this debate and make all matters germane from this point on. Next Wednesday, we will vote on cloture again. And if there are 60 Senators who vote for cloture, then that will bring a large part of this debate to a closure.

I think I would be remiss if I did not say, on behalf of the majority leader and others on our side who are working hard to move this amendment, that we believe that is a reasonable period of time and we believe that every person here has had a chance to bring up their amendments.

We tried to get to an amendment up last night. We were willing to work

later. We could not get one person to put up an amendment.

So we have reached a point where we can go along with more amendments. But once cloture is invoked then only those that are germane will be considered and then only for a limited period of time.

But I just want to make the record straight that this is not a rewriting of the whole Constitution, although it is important and it will have a dramatic imprint and impact on how we spend and how we tax in America from that point on if this amendment is passed through both Houses of Congress by the requisite two-thirds vote and ratified by three-quarters of the States. It is very important. Those who are for it are very concerned about it and those who are opposed are rightly very concerned about it.

We have had a very healthy debate. We intend to continue as long as is necessary to bring this matter to closure. But I do not want anybody thinking that anybody has been cut off here or that anybody has been mistreated or that anybody has not been given their chance to bring up amendments, because they have. We have tabled those amendments. We feel that that is certainly within our right to do that. We have tried to treat every amendment with the dignity and the prestige that it deserves.

Finally, I would like to encourage my colleagues next Wednesday to vote for cloture. Because we all know where it stands. We all know the arguments on both sides. This is not just 14 days. Since I have been here, we are in our 19th year debating this matter, in the Judiciary Committee now four times and stopped a number of other times in the Judiciary Committee before we could even get it to the floor.

So this is not an unusual situation. We actually have worked hard. Everybody here knows what is involved in this amendment. Everybody here knows the arguments against it. And everybody here knows that we voted on some very substantial and very important amendments thus far, and those who are in a bipartisan way thus far have been successful in maintaining the integrity of the House-passed amendment; I might add just one more time, a House-passed amendment for the first time in the history of this country. And I have to say that is historic.

Now we have the opportunity of passing it through here and submitting it to the States. And those of us who support it hope that 38 States will ratify it. We hope all 50 will, but at least 38, three-quarters. And if they do, then this will become the 28th amendment to the Constitution.

But I just wanted to make those points. I am sorry I delayed the distinguished Senator from Rhode Island.

Mr. BYRD. Mr. President, I do not want to leave the record standing as the distinguished Senator from Utah has left it. I believe he indicated he thought there was a deliberate effort to delay.

Mr. HATCH. I said not by the distinguished Senator from West Virginia. I would not impute that to you and I hope that is not the case.

But I do not think many reasonable people would conclude that we have not given an extensive amount of time to this debate. And I think people might conclude that now that we have gone through one cloture vote that there may be a desire of some here to delay this matter from a filibuster standpoint. I hope that is not true. But that is the way it looks to me.

I admit that I am not nearly as experienced here as the distinguished Senator from West Virginia, but I have been here 19 years and I have observed. I can remember the majority leader, Senator Mitchell, calling filibusters filibusters in less than a day. And here we have had 14 days, so it is 3 solid weeks of Senate debate on this, and extensive amendments, although not as many as the 1982, where there were 31 amendments. But we did that in 11 days. I think people could reasonably conclude that there is a filibuster going on.

Mr. BYRD. Mr. President, I disagree with that statement.

The Senator from Utah was not here during the debate on the Civil Rights Act, which lasted 103 days, covered a total of 103 days between the date of the motion to proceed on March 9, 1964, and the date on which the final vote occurred on the civil rights bill on June 19. March 9, June 19th—103 days transpired. The Senate was on the bill itself 77 days and debated the bill 57 days in which there were included six Saturdays.

The Senator implies that there may be a deliberate effort here to delay this measure. Nobody has engaged, that I know of, in obstructionist tactics. Imagine what one could do if he wanted to. There have been no dilatory quorum calls. There have been no dilatory motions to reconsider, and the asking for the yeas and nays on a motion to reconsider, and then put in a quorum call and send for the Sergeant at Arms and have the Sergeant at Arms arrest Members, as I had to do. Nothing dilatory has been done.

Nobody has objected to any time limits on amendments. Not one objection that I know about. I have had every amendment that has been called up here and time request that has been brought to me, brought to me because I am a Senator. I have not objected to any such request.

The majority leader has a right to offer cloture motions. I think he has been fairly reasonable in this situation. He has not been pressing out here daily for action on this constitutional amendment.

I am not against Senator HATCH. I am not against Senator DOLE. I am just against this amendment. Nobody has attempted to deliberately delay this. Let me debunk that idea from any Senator's mind.

I want to see this come to an end. It is going to come to an end. I will have no more to say unless the Senator wants to carry on this bit of subject matter further.

Mr. HATCH. Mr. President, I appreciate my colleague offering that opportunity. All I have to say is that the rules today are considerably different than they were during the civil rights debates when they went 103 days. Cloture can be invoked. There is no such thing as a postcloture filibuster today.

Mr. BYRD. There could be.

Mr. HATCH. But a lot different from the old days.

Mr. BYRD. Does the Senator know why it is different? Because I, as majority leader, laid down certain points of order that were upheld by the then Presiding Officer, and we established precedents that make it much more difficult to carry on a postcloture filibuster.

Mr. HATCH. How well aware I am, and I compliment the distinguished Senator from West Virginia for his knowledge of the rules.

Mr. BYRD. I thank the Senator for that compliment. I hope I have a little knowledge of a few things other than just the rules of the Senate.

Mr. HATCH. I have to confess that I think the distinguished Senator is a fine Senator, a great Senator.

I know that he knows the rules very well and I think he knows the Constitution quite well, although I do think earlier in the day he said there were no amendments dealing with the economy.

Mr. BYRD. No, no. I said no amendments dealing with fiscal policy.

Mr. HATCH. I believe the contract laws, I believe the 16th amendment do deal with fiscal policy.

Mr. BYRD. It does not attempt to write fiscal policy, fiscal theory, about which Justice Oliver Wendell Holmes said there is no place in the Constitution for fiscal theory.

Mr. HATCH. I agree with that, if you consider that fiscal policy.

Mr. BYRD. I consider this amendment which, by the way, I think contains about 465 words.

Mr. HATCH. It does.

Mr. BYRD. The entire first 10 amendments in the Bill of Rights contain only about 385 words. This amendment alone contains about 465 words. The entire 10 amendments in the Bill of Rights contained only around 385.

What I am saying is this nefarious amendment that is proposed here has only about 80 fewer words than do the 10 amendments to the Bill of Rights. The 10 amendments contain, I think, about 465 words, and this monstrosity contains about 385. So there are only about 80 words difference.

My math may be off a little bit this afternoon. I have not had any lunch, and my feet are getting a little tired.

Mr. HATCH. I am happy to yield the floor.

Mr. BYRD. Mr. President, I ask unanimous consent that Mr. PELL be recognized for 10 minutes, and that he be followed by Senator MURRAY, not to exceed 5 minutes.

I thank Senator HATCH for his gracious manner and his characteristic friendliness and conviviality. He is a fine Senator. I enjoy working with him.

The PRESIDING OFFICER. Without objection, it is so ordered.

## MAJORITY RULE

Mr. PELL. Mr. President, I rise in support of the amendment offered by the distinguished and learned Senator from West Virginia [Mr. BYRD] to amend the proposed constitutional amendment to allow a majority, rather than a supermajority to determine when a deficit can be incurred.

The concept of majority rule is so deeply embedded in our society and in almost every organized group proceeding—from fraternal and social groups to corporations large and small and government at the village, county, city, and State level—that many Americans might be very surprised to realize the extent to which the Congress of the United States is sometimes ruled by a minority, and could become more so in the future.

We have before us the balanced budget amendment which contains not just one but two supermajority requirements—one requiring a three-fifths vote of the entire membership of each House to permit outlays to exceed receipts and the other a three-fifths vote of the entire membership of each House to increase the public debt limit.

And we may soon have before us a line-item veto proposal which would subject congressional disapproval of a rescission to a two-thirds supermajority veto override, as opposed to an alternative plan under would a simple majority could block a rescission.

If approved, these supermajority requirements would join others already in place: the Senate cloture rule, the new rule of the House of Representatives on votes of that body to raise income taxes, and the statutory supermajority requirement for waiving points of order under the Balanced Budget and Emergency Deficit Control Act of 1985, better known as Gramm-Rudman-Hollings.

Mr. President, these flirtations with supermajorities are leading us astray from the apparent intent of the wise men who wrote the Constitution two centuries ago. For them the principle of majority rule was so self-evident that they apparently saw no need to state it explicitly.

Since the Constitution provides for supermajorities only in specific instances—such as overriding vetoes, Senate consent to treaties, Senate verdicts on impeachment, expulsion of Members, determination of Presidential disability and amending the Constitution itself—it seems clear that the Framers intended that all other business should be transacted by a majority.

And since the Constitution gives the Vice President the power to break ties when the Senate is ''equally divided,'' Framers again evidenced a clear intent that business was to be transacted by a majority. We carry forward that intent in the structural organization of Congress itself, whereby the party that controls 50 percent plus one seat assumes control.

The time may be coming when the only way to prevent further violence to the Framers intent will be to enshrine this most basic principle of governance—majority rule itself—as a constitutional provision.

Mr. President, I offer these reflections today from the vantage point of 34 years service in this body. As I stated here a few days ago, I have cast 327 votes for cloture during those years, so I am no stranger to the impact and consequences of a supermajority requirement in the Senate.

I would point out, in that regard, that cloture by majority rule would not cancel out rule XXII of the Senate—it would simply lower the margin for invoking cloture to the threshold envisioned by the Founding Fathers for the transaction of business. And we should make no mistake about the fact that the rules of proceedings now have such sweeping substantive effect that they do in fact constitute an important element in the business of the Senate.

Mr. President, in the haste to fulfill the expectations and promises of this new Congress, many of which are of great merit, we must take special care to preserve basic principles of our democracy which may be brushed aside in the rush to reform. The principle of majority rule is the basic cornerstone of the edifice, whether it applies to rules of proceedings or the substance of legislation. It must be preserved and protected from all assaults. Perhaps the time is coming when it too should be enshrined in the Constitution.

I ask unanimous consent that three articles entitled ''The Three-Fifths Rule: A Dangerous Game'' by David Broder, ''Super-Majority Simple-Mindedness'' by Lloyd N. Cutler, and ''On Madison's Grave'' by Anthony Lewis, be printed in the RECORD.

There being no objection, the articles are ordered to be printed in the RECORD, as follows:

[From the New York Times, Jan. 30, 1995]

### ON MADISON'S GRAVE

(By Anthony Lewis)

BOSTON.—''Miracle at Philadelphia,'' Catherine Drinker Bowen called her book on the Constitutional Convention of 1787. And it was a political miracle. The delegates produced a document that has ordered a huge country for 200 years, balancing state and nation, government power and individual rights.

The Constitution has been amended 27 times. Some of the changes have been profound: the Bill of Rights, the end of slavery. But none has altered the fundamental structure, the republican systems designed by James Madison and the others. Until now.

Now the House of Representatives has approved an amendment that would make a revolutionary change in the Madisonian system. It is call the Balanced Budget Amendment. A more honest name would be the Minority Rule Amendment.

The amendment does not prohibit unbalanced budgets. It requires, rather, that a decision to spend more in any fiscal year than anticipated receipts be made by a vote of three-fifths of the whole House and Senate. The same vote would be required to increase the debt limit.

The result would be to transfer to minorities effective control over many, perhaps most, significant legislative decisions. For the impact would not be limited to the overall budget resolution. Most legislation that comes before Congress bears a price tag. If a bill would unbalance a budget, a three-fifths vote would be required to fund it.

In short, a minority of just over 40 percent—175 of the 435 representatives, 41 of the 100 Senators—could block action. It takes no great imagination to understand what is likely to happen. Members of the blocking minority will have enormous power to extract concessions for their votes: a local pork project, a judgeship for a friend. * * *

Just think about the debt-ceiling provision. Even with the best of intentions to stay in balance, the Government may find itself in deficit at any moment because tax receipts are lagging. Then it will have to do some short-term borrowing or be unable to meet its obligations. Instead of a routine vote for a temporary increase in the debt ceiling, there will be a session of painful bargaining for favors.

The amendment is also a full-employment measure for lawyers. Suppose the figures that produce a balanced budget are suspect, or suppose the demand for balance is ignored. How would the amendment be enforced? Sponsors say it would be up to the courts. So this proposal, labeled conservative, would turn intensely political issues over to judges!

It is in fact a radical idea, one that would subvert majority rule and turn the fiscal debates that are the business of democratic legislatures into constitutional and legal arguments. How did a conservative polity like ours ever get near the point of taking such a step?

The answer is plain. The enormous Federal budget deficits that began in the Reagan years have frightened us—all of us, conservative and liberal. We do not want our children and grandchildren to have to pay for our profligacy. We are not strong-minded enough to resist deficit temptation, so we are going to bind ourselves as Ulysses did to resist the lure of the Sirens.

The binding would introduce dangerous economic rigidities into our system. In times of recession government should run a deficit, to stimulate the economy. But the amendment would force spending cuts because of declining tax receipts, digging us deeper into the recession.

The rigidities of the amendment would also inflict pain on millions of Americans. The target year for balancing the budget, 2002, could not be met without savage cuts in middle-class entitlements such as Social Security and Medicare.

''It's a bad idea whose time has come,'' Senator Nancy L. Kassebaum, Republican of Kansas, said. ''It's like Prohibition; we may have to do it to get it our of our system.''

If someone as sensible as Nancy Kassebaum can succumb to such counsels of despair, we have truly lost Madison's faith in representative government. Madison knew that majorities can go wrong; that is why he and his colleagues put so many protections against tyranny in their Constitution. But